

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**EMPIRE JANITORIAL SALES
& SERVICE, LLC**

and

Case 15-CA-146938

**UNITED LABOR UNIONS,
LOCAL 100**

ORDER¹

The Employer's petition to revoke subpoena ad testificandum A-1-ML19TR, addressed to Dayle A. Hernandez, is denied. The subpoena seeks information relevant to the matter under investigation and describes with sufficient particularity the evidence sought, as required by Section 11(1) of the Act and Section 102.31(b) of the Board's Rules and Regulations. See *Postal Workers Local 64 (USPS)*, 340 NLRB 912 (2003); *Offshore Mariners United*, 338 NLRB 745 (2002).² Further, the Employer has failed to

¹ The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

² The disposition of the Employer's petition to revoke is consistent with existing Board law as reflected in *Postal Workers* and *Offshore Mariners*, which find subpoenas identifying the case name and number to be sufficiently particular.

Member Miscimarra agrees that the Region has described with sufficient particularity the evidence sought from the Employer's manager, Dayle A. Hernandez, based on the Region's uncontradicted assertions in its brief in opposition to the petition to revoke that it (1) attached to the subpoena a copy of the third amended charge and, in a cover letter to Employer's counsel, explained (2) which allegations will be the focus of the testimony it seeks and (3) that a purpose of the interview will include Hernandez' review of his proposed Board affidavit. In the view of Member Miscimarra, however, the subpoena itself should describe with reasonable particularity the general topic(s) or issue(s) that would be the subject of subpoenaed testimony or other evidence. See Sec. 11(1) of the Act; Sec. 102.31(b) of the Board's Rules. Member Miscimarra believes the requirement of "particularity" requires more than merely giving the case name and number of the proceeding in which the subpoena has been issued. He also notes that the Board has moved in the direction of providing substantially more detail in

establish any other legal basis for revoking the subpoena.³ See generally *NLRB v. North Bay Plumbing, Inc.*, 102 F.3d 1005 (9th Cir. 1996); *NLRB v. Carolina Food Processors, Inc.*, 81 F.3d 507 (4th Cir. 1996).

Dated, Washington, D.C., December 9, 2015.

PHILIP A. MISCIMARRA,	MEMBER
KENT Y. HIROZAWA,	MEMBER
LAUREN McFERRAN,	MEMBER

remedial notices, for example, to “facilitate a better understanding,” including hyperlinks and QR codes providing direct electronic access to the Board’s decision(s). Cf. *Durham School Services LP*, 360 NLRB No. 85 (2014). Although subpoenas serve a different purpose, Member Miscimarra believes subpoenas should provide fair notice to recipients regarding the topic(s) or issue(s) deemed relevant to the testimony or other evidence being sought.

³ The Employer argues that the subpoena should be revoked because, although the subpoena purportedly seeks testimony, the accompanying cover letter indicates (in the Employer’s view) that its purpose is “to force Mr. Hernandez to sign the poorly worded 43 page affidavit.” Petition at 4. However, neither the subpoena nor the cover letter contains any indication that Mr. Hernandez will be “forced” to sign any document. Indeed, the Employer does not deny that the Region has repeatedly urged Mr. Hernandez to review the affidavit that he previously gave and revise it as necessary to provide the Region with an accurate statement of the facts as known to him. If Mr. Hernandez declines to review and sign the prior affidavit, he can instead provide fresh testimony pursuant to the subpoena.